



North Carolina Department of Health and Human Services

Michael F. Easley, Governor

Carmen Hooker Odom, Secretary

Division of Mental Health, Developmental Disabilities and Substance Abuse Services

3001 Mail Service Center
Raleigh, North Carolina 27699-3001
Tel 919-733-7011 • Fax 919-508-0951
Michael Moseley, Director

Division of Medical Assistance

2501 Mail Service Center
Raleigh, North Carolina 27699-2501
Tel 919-855-4100 • Fax 919-733-6608
L. Allen Dobson, Jr. MD, Assistant Secretary for Health Policy and Medical Assistance

October 27, 2006

MEMORANDUM

TO: Legislative Oversight Committee
Local CFAC Chairs
NC Council of Community Programs
County Managers
State Facility Directors
LME Board Chairs
Advocacy Organizations
MH/DD/SAS Professional and Stakeholder Organizations

Commission for MH/DD/SAS
State CFAC
NC Assoc. of County Commissioners
County Board Chairs
LME Directors
DHHS Division Directors
Provider Organizations

FROM: L. Allen Dobson, Jr., MD *LAD mb*
Mike Moseley *mm/ms*

SUBJECT: Implementation Update #19
Clarification Regarding Family Members as Paid Providers under CAP-MR/DD Waiver

One of the areas of flexibility in our CAP-MR/DD Waiver is the option for parents, other family members, and guardians of adult consumers to serve as paid providers of services and supports. In many cases this can be very much in the consumer's best interest because the family/guardian already knows the consumer and his strengths and needs, her goals and aspirations, etc. However, it can also give rise to concerns about conflicts of interest and adequate external monitoring of the health and safety of the consumer. In an effort to address these issues, our Divisions have developed the attached policy entitled "Services and Supports Provided by Legally Responsible Individuals, Relatives, and Legal Guardians." This policy will be incorporated into the CAP-MR/DD Waiver through a Technical Amendment which has been submitted to the Centers for Medicare and Medicaid Services (CMS).

As case managers work with consumers and families around the development of an initial Person Centered Plan (PCP) or as part of a Continued Need Review (CNR), these guidelines should be followed. If a consumer's current PCP includes services from a family member/guardian that are not in compliance with this policy, the case manager should begin working with the consumer and their family/guardian to develop alternatives prior to the CNR. It is not necessary to change the PCP or service arrangement at this time, but it must be adjusted to comply with the policy at the time of the CNR. Case managers should also ensure that special care is taken in developing the PCP for consumers who will receive services and supports delivered entirely or predominantly by family members or guardians. The PCP should reflect how the consumer will access opportunities to interact with the community at large and how the individual's health and safety will be independently monitored in cases where external service providers are not engaged. This consideration

should not be interpreted to reflect negatively on family members and guardians but rather to reflect our commitment to ensuring that all consumers are provided opportunities to live in communities of their choice and that their health and safety is assured.

As case managers develop plans of care with consumers and families that include services to be delivered by family members, that fact should be noted in the POC and should include the number of hours of service to be provided by a family member. For example, "Jane will receive 56 hours per week of Personal Care Services, 40 of which will be delivered by her mother."

If you have any questions concerning these matters, please email contactdmh@ncmail.net.

Attachment

cc: Secretary Carmen Hooker Odom
Mark Benton
Dan Stewart
DMH/DD/SAS Executive Leadership Team

William Lawrence, MD
Tara Larson
Carol Robertson
Angela Floyd

Sharnese Ransome
Kaye Holder
Wayne Williams

Services and Supports Provided by Legally Responsible Individuals, Relatives, and Legal Guardians

Services and Supports Provided by Legally Responsible Individuals

- Payment to legally responsible individuals of waiver recipients, including biological and adoptive **parents of recipients under 18**, and **spouses of adult recipients**, for any waiver services is prohibited under the CAP-MR/DD waiver.

Payment to Relatives of Waiver Recipients

- Payment to relatives of waiver recipients including biological or adoptive **parents of adult children**, and other biological family members such as brothers or sisters, is allowable for any waiver services within the following requirements:
 1. A parent/parents, biological or adoptive, of an adult child in combination may not provide more than 40 hours of services in a seven day period. For parents, biological or adoptive, 40 hours is the total amount regardless of the number of children who receive services under the waiver.
 2. Other biological family members such as brothers or sisters may not provide more than 40 hours of services in a seven day period.
 3. Waiver recipients must be offered a choice of providers. If the waiver recipient chooses a parent or biological family member as their care provider, it must be documented in the Plan of Care.
 4. The service provided is not a function which a relative would normally provide for the individual without charge as a matter of course in the usual relationship among members of the nuclear family.
 5. The relative must meet the provider qualifications of the service.

Payment to Legal Guardians

Payment to legal guardians, including general guardians, guardians of the person, and guardians of the estate, for any waiver services is prohibited under the CAP-MR/DD waiver, with the exception that legal guardians of the person may provide Residential Supports if they are not the parent or step-parent of a minor or adult child, including biological and adoptive parents, or spouse. Except for the guardian of the person, a guardian has fiduciary duty and responsibility for caring for the ward's person and/or estate. Provision of paid care to the guardian of the ward is in conflict to the fiduciary duty of the guardian to protect the interest of the ward, manage the ward's estate, preserve the ward's assets in secure investments, or provide for the ward's shelter, food and health care. A fiduciary may not do anything which could appear to be for the fiduciary's own interest.